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## Extraterritorial Effect of the Statute of Frauds

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Thus, though the case of *First National Bank v. Missouri* does not, strictly speaking, directly decide that national banks have, in general, no power to maintain branches, yet it does decide it collaterally as the only basis on which the decision regarding the state statute can be upheld.

F. WARNER FISCHER, '27.

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## EXTRATERRITORIAL EFFECT OF THE STATUTE OF FRAUDS

There is perhaps no branch of Conflict of Laws which is in as utter confusion as the extraterritorial interpretation of the Statute of Frauds. Story lays down the following rule: "If such contracts made by parol in a country by whose laws they are required to be in writing, are sought to be enforced in any other country, they will be held void, exactly as they are held void in the place where they are made. And the like rule applies vice versa where such contracts are good by the law of the place where they are made; but would be void if originally made in another place where they are sought to be enforced, for want of certain solemnities, or for want of being in unity, as required by the local law."<sup>1</sup>

However, Story's rule can no longer be said to be the general law on this subject. There are at present four different rules that are followed by the courts of this country.

The first rule is that the 4th section of the Statute of Frauds applies only to the remedy and procedure and therefore the law of the *lex fori* governs.

*Barbour v. Campbell*<sup>2</sup> is an example of this rule and probably cited more by courts than any other American case on this subject. Plaintiff, the divorced wife of Webster Barbour, brought suit against his daughter upon an oral promise by which the defendant promised to compensate her for services rendered by her to defendant's father during his last sickness. This suit was brought in Kansas, while the contract sued on was made in Idaho. By the Kansas statute, such an oral agreement was declared unenforcable; by the Idaho statute, the oral contract was valid. The Kansas Court refused to follow the

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1. Story on Conflict of Laws, p. 349.

2. 101 Kan. 617, 168 Pac. 879.

Idaho law and held it unenforceable, as such an oral contract was against the public policy of the state.

Another leading case which lays down the same rule is *Heaton v. Eldridge*<sup>3</sup>. This case involved the point as to whether an oral agreement made in Pennsylvania, by which the defendant agreed to sell cigars for the plaintiffs for a specified time extending beyond a period for one year, could be enforced in Ohio. This was a valid contract in Pennsylvania, but not in Ohio. The Ohio court refused to recognize the Pennsylvania law, and held the contract unenforceable which was in accord with the Ohio statute of Frauds.

The leading English case on this subject is *Leroux v. Brown*<sup>4</sup>, and is the chief basis of American state courts adopting the rule. In this case, plaintiff orally agreed to enter the employment of the defendant in France. Plaintiff brought suit in England, as defendant had failed to carry out his part of the contract. It was held that the action would not lie in England due to the Statute of Frauds, although a valid agreement in France, the court saying, "I am of the opinion that the 4th section applies not to the solemnities of the contract, but to the procedure; and therefore that the contract in question cannot be sued upon here." This rule has been followed in North Carolina<sup>5</sup>, Connecticut<sup>6</sup>, Kentucky<sup>7</sup> and in the states mentioned in the above cases.

Conversely the action may be maintained if the *lex fori* is complied with, although it could not have been maintained under the laws of the place where the contract was made. In *Douner v. Clesebrough*<sup>8</sup>, a promissory note was made and indorsed in blank in the state of New York where it was payable. By the New York law no agreement different from that which the law infers from a blank indorsement can be proved by parol evidence. In a suit on a note against an indorser in Connecticut, it was held that parol evidence of a special agreement different from that implied would be received.

The second rule is that the 17th section of the Statute of Frauds is not procedural, but goes to the substance of the obligation; thus the law of the place that the contract is entered into governs. In *Hausman v. Nye*<sup>9</sup>, the court said, "where an agent of a person doing business in another state (Ohio) contracts with a merchant in this state for the sale of a bill of goods for a price exceeding fifty dollars and no part

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3. 56 Ohio St. 87, 46 N. E. 60, 36 L. R. A. 817.

4. 12 C. B. 801.

5. *Magee v. Blankenship*, 95 N. C. 563.

6. *Douner v. Clesebrough*, 36 Conn. 39.

7. *Boone v. Coe*, 153 Ky. 233, 154 S. W. 900.

8. See Note 6.

9. 62 Ind. 485.

of the property is received by the purchaser, no earnest is given to bind the bargain, or in part payment, and no note or memorandum signed by the party to be charged, or his lawfully authorized agent, such contract is an Indiana contract and void by the Statute of Frauds." This is also the rule in Missouri<sup>10</sup> and Michigan.<sup>11</sup>

The third rule is that the Statute of Frauds as a whole relates to the remedy and the law of the forum governs. This appears to be the rule of the Federal Courts,<sup>12</sup> Iowa,<sup>13</sup> Massachusetts<sup>14</sup> and Maine.<sup>15</sup>

The fourth rule is that the Statute of Frauds as a whole does not relate to the remedy and that the *lex fori* does not govern. In *Murdock v. Colonization Co.*<sup>16</sup> it was held that an oral contract made and performed in the province of Alberta, Canada, to procure a purchaser for real estate, situate therein, is not enforceable in the courts of Illinois, when void under the statute of that province. Minnesota<sup>17</sup> and New York<sup>18</sup> have adopted this rule.

The tendency of the modern cases seems to be to follow Story's rule quoted at the beginning of this note. The case of *Franklin Sugar Refining Co. v. Holstern Harvey's Son*<sup>19</sup> illustrates this. Plaintiff, a Pennsylvania corporation sued defendant, a corporation chartered in Delaware, in the Federal Court in Delaware, on an oral contract for sugar which was to be performed in Pennsylvania. Defendant pleaded the Pennsylvania Statute of Frauds. There was no such statute in Delaware. It was held that the Pennsylvania law would govern, as it was a contract of that state, and also due to the fact that the Supreme Court of Delaware had enforced the law of the place of contract in previous decisions, and therefore that the Federal Court would follow its decisions. The Circuit Court of Appeals of the United States in the still later case of *Edwards v. Bradford Co.*<sup>20</sup>, followed the rule of the last case. Another case which followed this rule is *Hooker v. McRae*<sup>21</sup>, (Miss.). The court held that an oral contract for the

10. *New York Third National Bank v. Steel Co.*, 129 Mich. 434.

11. *Brockman Commission Co. v. Kilbourne*, 111 Mo. A. 542, 86 S.W. 275.

12. *Rantoul Co. v. Claremont Paper Co.*, 196 F. 305, 116 C. C. A. 125.

13. *Bader v. Hiscox*, 174 N. W. 565.

14. *Townsend v. Hargrave*, 118 Mass. 326.

15. *Bird v. Monroe*, 66 Me. 337.

16. 193 Ill. A. 295.

17. *Matson v. Bauman*, 139 Minn. 296.

18. *Gring v. Vanderbilt*, 13 N. Y. St. 457.

19. 275 F. 622.

20. 294 F. 21.

21. 91 So. 744.

purchase of railroad ties made in Tennessee, which was valid in that state, would be enforced in Mississippi, although a contract of such nature was void in that state.

The Kansas Court seems to repudiate the above doctrine, mainly on the ground that it is against the public policy of the state. The recent case of *Lemen v. Sidener*<sup>22</sup> (May 10, 1924), was an action for damages due to defendant's refusal to purchase real estate, according to an oral contract entered into in Texas. This contract was valid in Texas. The Kansas Court held that this contract would be unenforceable, and citing *Barbour v. Campbell, supra*, said, "ordinarily a contract which is valid where made is valid everywhere, but there is a well known exception to that rule. Briefly stated the exception is that where the contract contravenes the settled public policy of the state whose tribunal is invoked to enforce the contract, an action on that contract will not be entertained."

In the case of *Ellis v. Eagle-Picher Lead Co.*<sup>23</sup>, decided on the same day as the *Lemen* case, *supra*, the Kansas Court followed their established rule. By an oral agreement made in Kansas, plaintiff agreed to sell, and defendant to buy a quantity of zinc ore located at an Oklahoma mine. Defendant failed to fulfill his part of the contract and plaintiff brought suit in Kansas. The defense was that such a contract was invalid under the Oklahoma Statute of Frauds. It was held that the contract being valid in Kansas, the plaintiff may recover the purchase price in a Kansas Court of competent jurisdiction. The Court based its decision on the principle that the law of the place of contracting, should govern over the law of the place of performance.

In conclusion, the rule laid down by Story appears to be best in accord with the spirit of the law, in that it recognizes the great doctrine of comity. This rule is being recognized more and more by the different states, and the rule that the law of the forum governs when questions of the Statute of Frauds are raised is gradually losing weight.

DIKRAN C. SEROPYAN, '26.

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22. 225 Pac. 1048.

23. 225 Pac. 1072.